

*Electronically Filed
February 19, 2010*

Nile Leatham (NV Bar No. 002838)
KOLESAR & LEATHAM
Wells Fargo Financial Center
3320 W. Sahara Ave.
Las Vegas, NV 89102
Telephone: 702.979.2357
Facsimile: 702.362.9472
E-Mail: nleatham@klnevada.com

Philip C. Dublin (NY Bar No. 2959344)
Abid Qureshi (NY Bar No. 2684637)
AKIN GUMP STRAUSS HAUER & FELD LLP
One Bryant Park
New York, NY 10036
Telephone: 212.872.1000
Facsimile: 212.872.1002
E-Mail: pdublin@akingump.com
aqureshi@akingump.com

Counsel for the First Lien Steering Committee

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA
SOUTHERN DIVISION**

IN RE: § **Case No. 09-14814-LBR**
§ **(Jointly Administered)**
THE RHODES COMPANIES, LLC, §
§ **aka "Rhodes Homes," et al.,** § **Chapter 11**
§
Debtors.¹ §

¹ The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, if applicable, are: Heritage Land Company, LLC (2918); The Rhodes Companies, LLC (3060); Rhodes Ranch General Partnership (1760); Tick, LP (0707); Glynda, LP (5569); Chalkline, LP (0281); Batcave, LP (6837); Jackknife, LP (6189); Wallboard, LP (1467); Overflow, LP (9349); Rhodes Ranch Golf and Country Club (9730); Tuscany Acquisitions, LLC (0206); Tuscany Acquisitions II, LLC (8693); Tuscany Acquisitions III, LLC (9777); Tuscany Acquisitions IV, LLC (0509); Parcel 20 LLC (5534); Rhodes Design and Development Corp. (1963); C&J Holdings, Inc. (1315); Rhodes Realty, Inc. (0716); Jarupa LLC (4090); Elkhorn Investments, Inc. (6673); Rhodes Homes Arizona, LLC (7248); Rhodes Arizona Properties, LLC (8738); Tribes Holdings LLC (4347); Six Feathers Holdings, LLC (8451); Elkhorn Partners, A Nevada Limited Partnership (9654); Bravo Inc. (2642); Gung-Ho Concrete, LLC (6966); Geronimo Plumbing, LLC (6897); Apache Framing, LLC (6352); Tuscany Golf Country Club, LLC (7132); Pinnacle Grading, LLC (4838).

Affects:

- ☒ **All Debtors**
☐ **Affects the following Debtor(s)**

§
§
§
§
§

**FIRST LIEN STEERING COMMITTEE'S
 REPLY TO STANLEY CONSULTANTS,
 INC.'S OBJECTION TO PROPOSED THIRD
 AMENDED PLAN**

The First Lien Steering Committee (the "First Lien Steering Committee"), consisting of certain unaffiliated lenders under the Credit Agreement dated as of November 21, 2005 among Heritage Land Company, LLC, The Rhodes Companies, LLC, and Rhodes Ranch General Partnership, as the Borrowers, the Lenders Listed Therein as the Lenders (collectively, the "First Lien Lenders"), and Credit Suisse, Cayman Islands Branch, as Administrative Agent, Collateral Agent, Syndication Agent, Sole Bookrunner and Sole Lead Arranger, by and through its undersigned counsel, hereby files this Reply (the "Reply") to Stanley Consultants, Inc.'s ("Stanley") Objection to Proposed Third Amended Plan (the "Stanley Objection"). In support of this Reply, the First Lien Steering Committee respectfully represents as follows:

REPLY²

1. On February 18, 2010, the First Lien Steering Committee filed its Third Amended Plan of Reorganization Pursuant to Chapter 11 of the Bankruptcy Code for The Rhodes Companies, LLC, *et al.* (the "Plan") to reflect, among other things, certain changes announced on the record at the Confirmation Hearing held on February 11 and 12, 2010. More specifically, the Plan was amended to provide that the Arizona Assets will be sold pursuant to a public auction rather than transferred to the Rhodes Entities in connection with the Mediation Settlement.

2. By the Stanley Objection, Stanley objects to the Plan on the grounds that the

² Capitalized terms not defined herein shall have the meanings ascribed to them in the Plan.

AKIN GUMP STRAUSS HAUER & FELD LLP
One Bryant Park
New York, New York 10036
Tel: 212.872.1000 Facsimile: 212.872.1002 / akingump.com

1 Plan allegedly includes provisions that (i) improperly vest the First Lien Steering
2 Committee, the Reorganized Debtors and the Rhodes Entities (the “Parties”) with the ability
3 to approve the bid procedures pursuant to which the Arizona Assets will be sold and (ii)
4 unfairly benefit the Rhodes Entities by providing that the Arizona Assets may be transferred
5 through the winning bidder’s acquisition of the stock of the Debtor entities that own the
6 Arizona Assets. In addition, Stanley alleges that the First Lien Steering Committee has not
7 adequately disclosed the nature of the intellectual property to be transferred in connection
8 with the sale of the Arizona Assets.
9

10
11 3. As an initial matter, Stanley’s assertion that the Plan improperly vests the
12 Parties with the authority to determine the procedures pursuant to which the Arizona Assets
13 will be sold is simply inaccurate and inconsistent with the proposed language of the Plan.
14 The Parties have always intended that the bid procedures would be approved by order of the
15 Court. As proposed, the Plan merely provides that the Parties will agree in advance on the
16 form of the bid procedures to be submitted for the Court’s approval. See Plan, Art. IV.U.
17 Nevertheless, in order to avoid unnecessary delay in the Debtors’ Chapter 11 Cases, the First
18 Lien Steering Committee has agreed to strike that portion of Article IV.U of the Plan that
19 requires the bid procedures to be acceptable to all Parties. Article IV.U will instead provide
20 solely that the bid procedures will be submitted to the Court for approval.³
21
22

23 4. The First Lien Steering Committee also disputes Stanley’s assertion that the
24 provisions of the Plan relating to the transfer of the Arizona Assets through the acquisition
25 of stock unfairly benefits the Rhodes Entities. As proposed, the Plan provides that “the
26 Arizona Assets may be transferred through the winning bidder’s acquisition of the stock of
27

28 ³ A blackline showing the modifications to the Plan described herein is attached as Exhibit A hereto.

AKIN GUMP STRAUSS HAUER & FELD LLP
One Bryant Park
New York, New York 10036
Tel: 212.872.1000 Facsimile: 212.872.1002 / akingump.com

1 Rhodes Arizona Properties LLC and Elkhorn Investments, Inc., in each case, as reorganized,
2 and certain assets of Rhodes Homes Arizona LLC.” See Plan, Art. IV.U. Because this
3 language is merely permissive and does not by its terms apply only to the Rhodes Entities,
4 the First Lien Steering Committee does not believe that this provision provides an unfair
5 benefit to the Rhodes Entities. Notwithstanding the foregoing, in the interest of facilitating
6 the Debtors’ expeditious emergence from chapter 11, the First Lien Steering Committee will
7 modify Article IV.U of the Plan to provide that the Arizona Assets will be transferred in a
8 manner to be agreed upon with the winning bidder.
9

10
11 5. Finally, the First Lien Steering Committee believes that Stanley’s assertion
12 that the nature of intellectual property to be transferred in connection with the sale of the
13 Arizona Assets has not be adequately disclosed should not delay the confirmation of the
14 Plan. As an initial matter, Stanley’s assertion that it is only now learning which assets
15 constitute the Arizona Assets is simply not true. A draft list of assets comprising the
16 Arizona Assets was included in Exhibit M to the Disclosure Statement, which Exhibit was
17 filed on November 12, 2009 (Docket No. 713). Moreover, the Debtors intend to file a
18 motion (the “Bid Procedures Motion”) in the near term seeking the Court’s approval of bid
19 procedures pursuant to which the Arizona Assets will be sold. Among other things, the Bid
20 Procedures Motion will set forth the date, subject to the Court’s approval, on which a list of
21 the Arizona Assets to be auctioned will be filed with the Court. If, at that time, Stanley
22 determines that the Arizona Assets include intellectual property that may not be transferred
23 by the Debtors, Stanley may file an objection to the inclusion of such intellectual property in
24 the sale of the Arizona Assets.
25
26

27 6. Based on the foregoing, the Stanley Objection should be overruled. The First
28

1 Lien Steering Committee will modify the Plan as described herein to address Stanley's
 2 concerns regarding (i) the approval of bid procedures pursuant to which the Arizona Assets
 3 will be sold, and (ii) the transfer of the Arizona Assets through the acquisition of stock in the
 4 Debtor entities that own such assets. In addition, Stanley will have ample opportunity to
 5 object, if necessary, to the sale of the Arizona Assets if Stanley determines that the Debtors
 6 are seeking to transfer intellectual property in which the Estates do not have an interest.

8 CONCLUSION

9 WHEREFORE, for the reasons set forth above, the First Lien Steering Committee
 10 respectfully requests that the Court (i) overrule the Stanley Objection, (ii) enter an order
 11 confirming the Plan and (iii) grant the First Lien Steering Committee such other and further
 12 relief as is just, proper and equitable.

13 Dated this 19th day of February, 2010.

14 By: /s/ Philip C. Dublin
 15 Nile Leatham (NV Bar No. 002838)
 16 KOLESAR & LEATHAM
 17 Wells Fargo Financial Center
 18 3320 W. Sahara Ave.
 19 Las Vegas, NV 89102
 20 (702) 979-2357 (Telephone)
 21 (702) 362-9472 (Facsimile)
 22 Nleatham@klnevada.com

23 AKIN GUMP STRAUSS HAUER & FELD LLP
 24 Philip C. Dublin (NY Bar No. 2959344)
 25 Abid Qureshi (NY Bar No. 2684637)
 26 One Bryant Park
 27 New York, New York 10036
 28 (212) 872-1000 (Telephone)
 (212) 872-1002 (Facsimile)
 pdublin@akingump.com
 aqureshi@akingump.com

Counsel for the First Lien Steering Committee

AKIN GUMP STRAUSS HAUER & FELD LLP
One Bryant Park
New York, New York 10036
Tel: 212.872.1000 Facsimile: 212.872.1002 / akingump.com

Exhibit A

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28